



DECLARATION OF DR. ANDREW M. PERRY

1. I, Dr. Andrew M. Perry, do hereby declare that I am President of Peripole-Bergerault, Inc. ("Peripole") and that I invented the invention disclosed and claimed in U.S. Patent Application Serial No. 10/150,411 (the '411 application). I am therefore personally familiar with the invention shown, described, and claimed in the '411 application.

2. I have been involved in the music industry throughout my life. I have been a leader in the music industry since at least as early as 1993. I am personally familiar with the recorder market and have consistently followed the problems, developments, and improvements in that market with great interest throughout my career in this industry.

3. A long-felt and unsolved problem for the music educator in classroom teaching the recorder was that whenever there was a change of activity from recorder playing to other activities such as singing, movement, or playing other instruments, the recorder had to be set down, often on the desk or floor. These activity changes occur intermittently throughout a music class period, thus leading to disruption of the teaching program, problems in hygiene, confusion of ownership, and delays in resuming recorder work.

4. A common type of recorder used in music education is the baroque-style recorder, as pictured in Exhibit A. As shown in Exhibit A, baroque-style recorders feature a large bulge above the fingering holes along the shaft of the recorder.

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5. Before my invention, the use of recorder suspension devices to keep the recorder in close proximity to the musician without the use of the musician's hands was extremely rare, and was essentially limited to the efforts of a few teachers who tied a string into a loop that was then fastened below the bulge in the shaft of the baroque-style recorder.

6. Although the admitted prior art string-tying approach provided a partial solution for this problem with respect to the common baroque-style recorder, this approach has never gained widespread acceptance or success due to its numerous drawbacks. For example:

- a. It could only be used effectively with recorders, such as baroque-style recorders, that included a bulge in their shaft design.
- b. It could not be effectively used with renaissance-style recorders (shown in Exhibit B) because the shafts of these recorders do not include bulges that can serve to prevent sliding movement of a string fastened around the recorder. If used for these recorders, the string would most likely end up directly below the mouth piece, partially blocking the air hole below the mouth piece.
- c. The requirement to tie the string into loops is extremely time consuming for the teacher.
- d. It is difficult to tie the loop to closely match the size of the recorder shaft, and maintaining precise consistency in the size of the loops is nearly impossible.
- e. The string loop loses its shape over time because of loosening of the knot or weakening of the string.

7. Because of these and other deficiencies, the string-tying solution is inherently unreliable, and has therefore failed to provide a satisfactory solution to the problems of the industry.

8. In 1996, Peripole began selling the first commercial embodiment of the invention disclosed in the '411 application. This embodiment, called the Halo® recorder ring, is pictured in Exhibit C. Since almost immediately after its introduction, the Halo® recorder ring has enjoyed tremendous commercial success.

9. The Halo® recorder ring includes a ring that is sized to fit an appropriate portion of the recorder. The ring is attached to a neck strap.

10. The Halo® recorder ring was the first device of its kind on the market and represented a major and significant innovation and improvement over the occasional string-tying approach for numerous reasons:

- a. This invention provides a recorder holder that can be used effectively with a recorder (such as a Renaissance-style recorder) that has a smooth, tapered shaft without any ridges or bulges (*see* Exhibit D);
- b. Using this invention, the teacher's valuable time and efforts are no longer consumed by tying knots in strings to fit around the recorder.
- c. The recorder ring can be manufactured to closely match the size of a recorder shaft at a specific point, thus providing precise consistency in the size of the ring.
- d. The recorder ring can be manufactured of a resilient material that will maintain its size over time.

e. Additionally, through this invention, it is possible to assure the exact placement of the ring on the shaft of the recorder in a location where the ring and strap will not interfere with fingering of the recorder or passage of air through its wind passageway.

11. For each of the foregoing reasons and others, the recorder ring provided a tremendously more reliable recorder suspension device than the string loop.

12. After Peripole began selling its recorder ring, others began recognizing the importance of this invention and started to make and sell their own recorder rings. At least one competitor LMI, advertised and sold nearly exact copies of the Halo® recorder ring (*see* Exhibit E). Another competitor, who made only slight modifications to the commercial embodiment of my recorder ring invention, was able to obtain a patent thereon. *See* Exhibit F.

13. U.S. Patent No. 6,384,307 B1, issued to Sueta, Jr. et al. in May 2002, (attached as Exhibit F) is a patent issued to a competitor for only slight modifications to the commercial embodiment of the recorder ring invention of the '411 application. The prior art cited in Sueta, Jr. et al. includes an advertisement for Peripole-Bergerault's Halo® recorder ring.

14. Unlike the string loop used by earlier teachers, the recorder ring can be precisely shaped and sized to match the tapered shaft of the recorder at a desired location. Accordingly, rather than relying on a bulge to keep the loop in place, the recorder ring of a preferred embodiment can be slipped onto one end of a separated two-piece shaft and then slid upwards into the appropriate place along the recorder shaft. In addition to preventing the recorder ring from slipping off the recorder, this also ensures that the ring

does not block any of the holes needed for playing the recorder. With the string loop, neither of these functions could be adequately provided.

15. The invention of the recorder ring was a new and innovative solution to the problems faced by the industry. The importance of this innovation is further exemplified by the later efforts of others to copy the invention directly, or to otherwise adopt its beneficial features to solve these problems, despite not having previously had a similar product on the market.

16. Since the introduction of Peripole's Halo® recorder ring, recorders having such a ring have become increasingly more popular because of the advantages provided by such a ring, while those without such a ring have become less popular.

17. Also, since the introduction of the Halo® recorder ring, others have attempted to sell strings or straps with pre-tied loops, but because of the problems identified previously, these have not gained the widespread popularity that the Halo® recorder ring has.

18. The Halo® recorder ring has enjoyed tremendous commercial success since its introduction in 1996 because of the advantages it offers over conventional suspension devices, such as the string loop.

19. A Halo® recorder ring has accompanied each renaissance-recorder sold by Peripole since its introduction of the recorder ring in 1996.

20. Since Peripole's introduction of the Halo® recorder ring and its inclusion with Peripole's renaissance-style recorders, sales of these recorders have increased steadily and significantly. Peripole now sells over two hundred-fifty thousand (250,000) recorders annually, each accompanied by a Halo® recorder ring.

21. Many music educators and other customers that purchase recorders now look exclusively for recorders that include a recorder ring and will not purchase recorders that do not include the Halo® recorder ring or a similar recorder ring.

Under penalty of perjury, I declare the foregoing statements to be true and correct to the best of my knowledge and understanding.

Dr. Andrew M. Perry

Dr. Andrew M. Perry
President
Peripole-Bergerault, Inc.

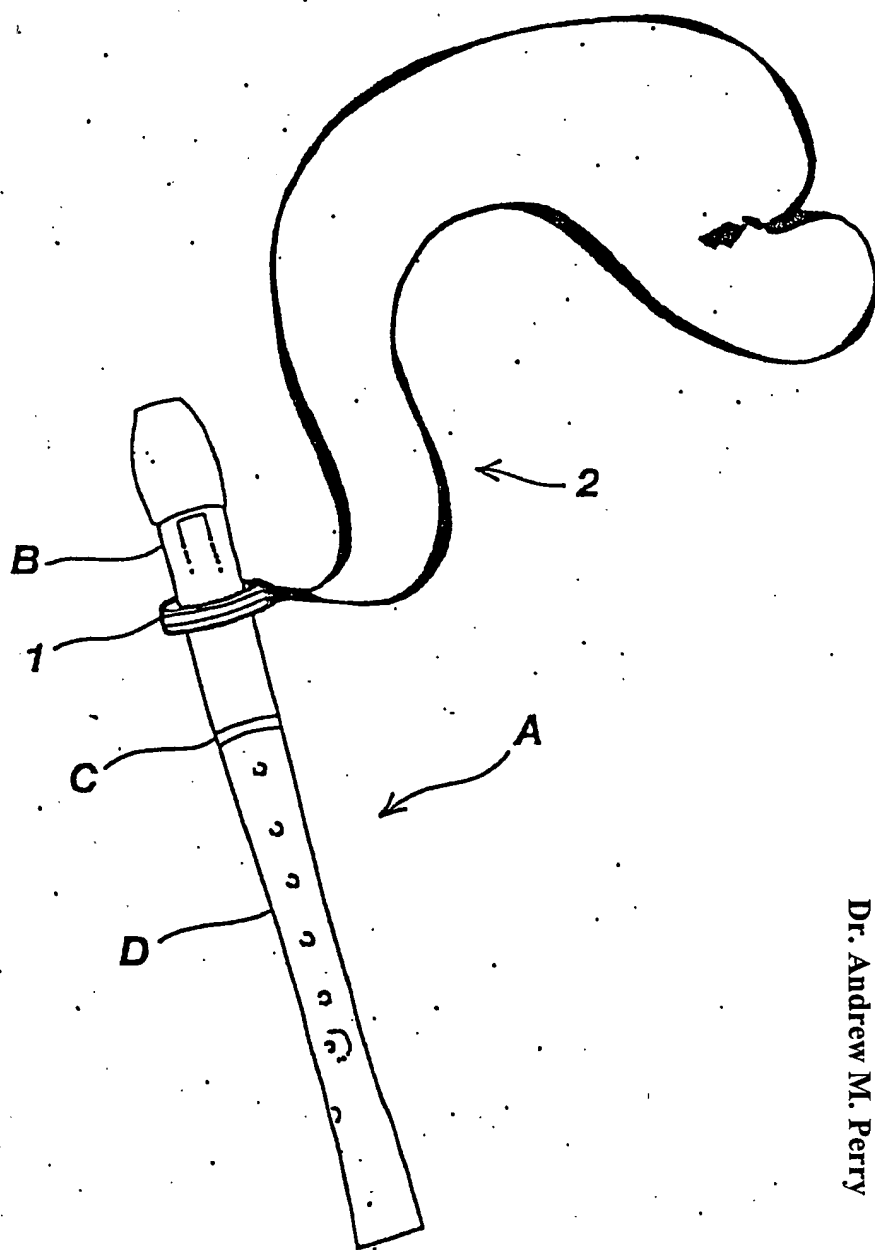


Fig. 3

LMI

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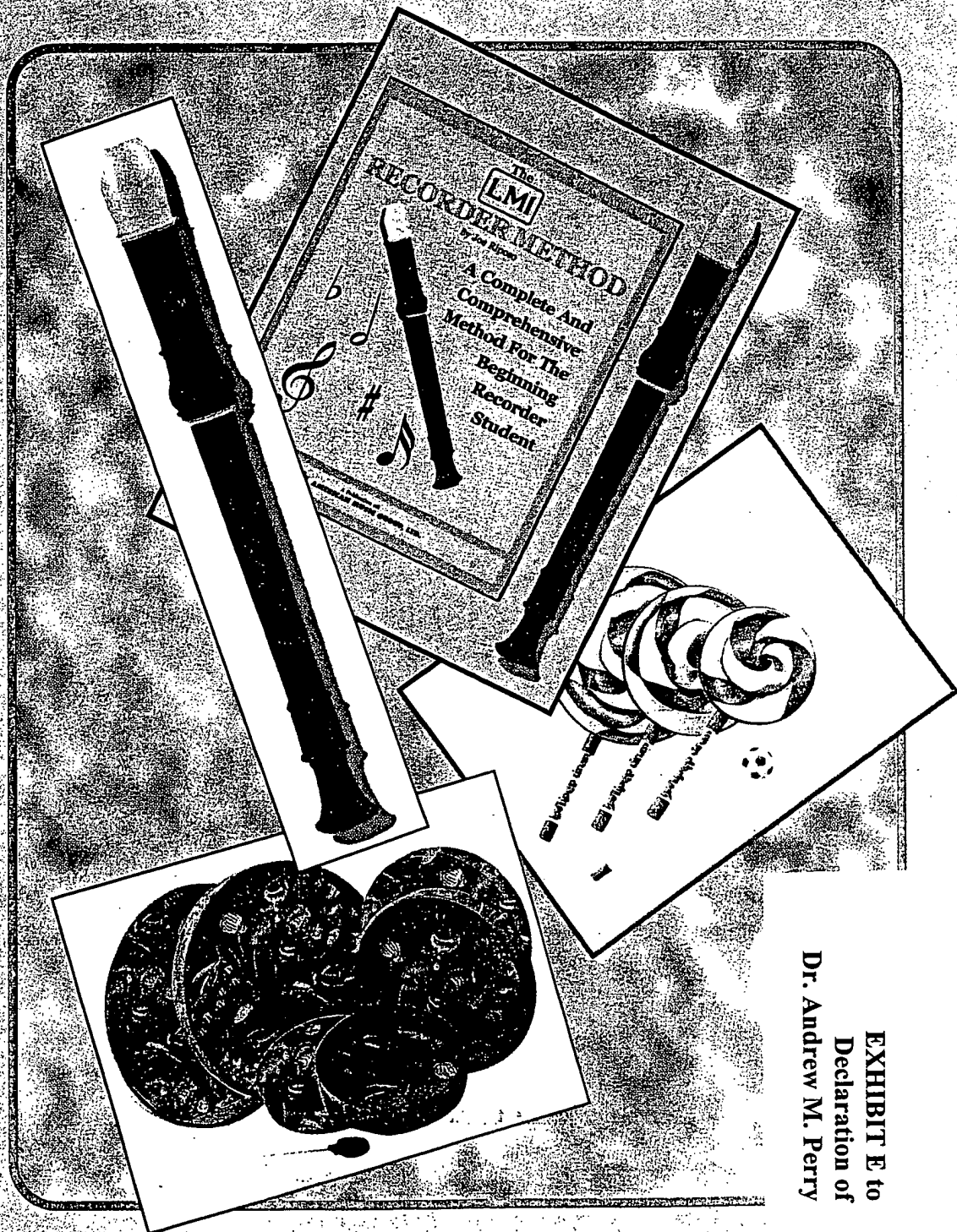


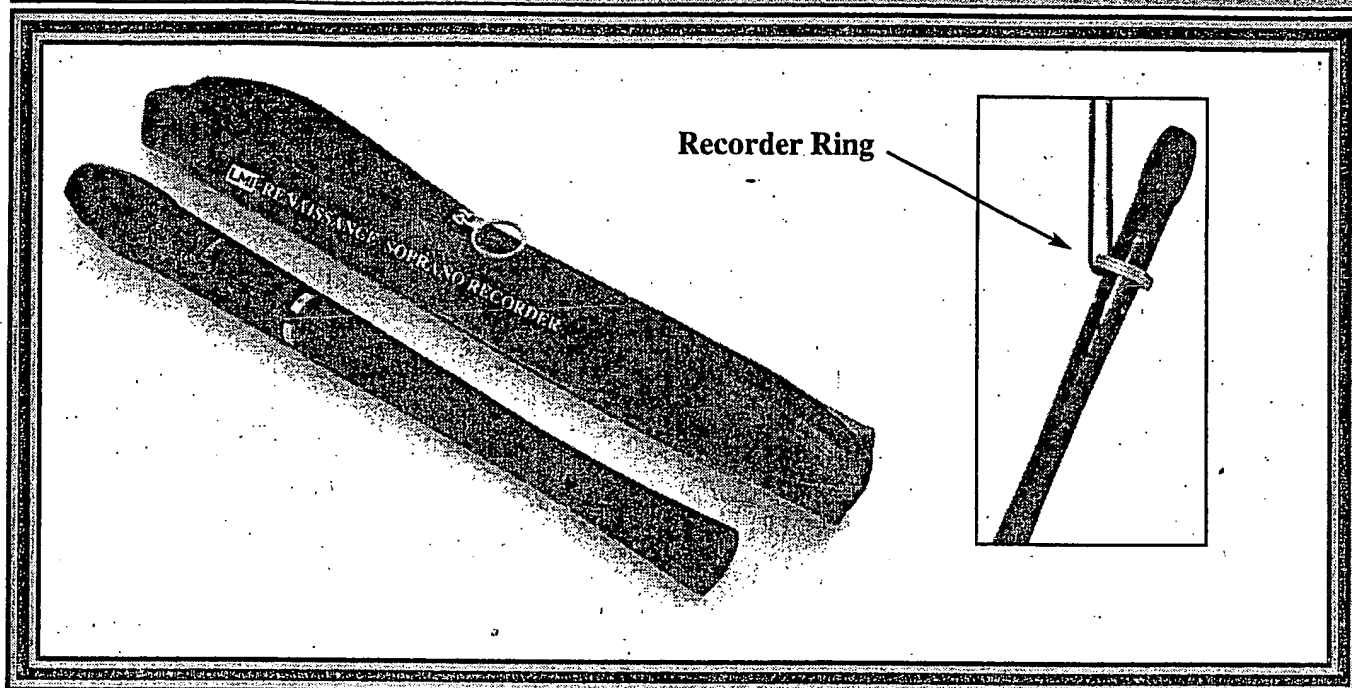
EXHIBIT E to
Declaration of
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TOLL FREE NUMBER:

1-800-456-2334

The LMI RENAISSANCE RECORDER

As Introduced in Our Winter 2001 Catalog



Another great addition to our fine line of LMI recorders

Easy to Play • Great Intonation • Great Tone • Affordable Price Authentic Design

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LMI RENAISSANCE RECORDER.

This is the perfect choice for the "step-up" instrument of if you want to start your students with something, "Just A Little Bit Better"

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LMI RENAISSANCE RECORDER. & BOOK COMBO

650525BB	LMI Renaissance Recorder & Book Combo (1 - 10)	\$6.50
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RR1	RECORDER RING	\$0.50
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Check out this innovative way to keep track of your recorder. Just slip off the head joint of your recorder, slip on the Recorder Ring and slip the cord around your neck. Your students will live it. It will make life a breeze when it comes to lost recorders.

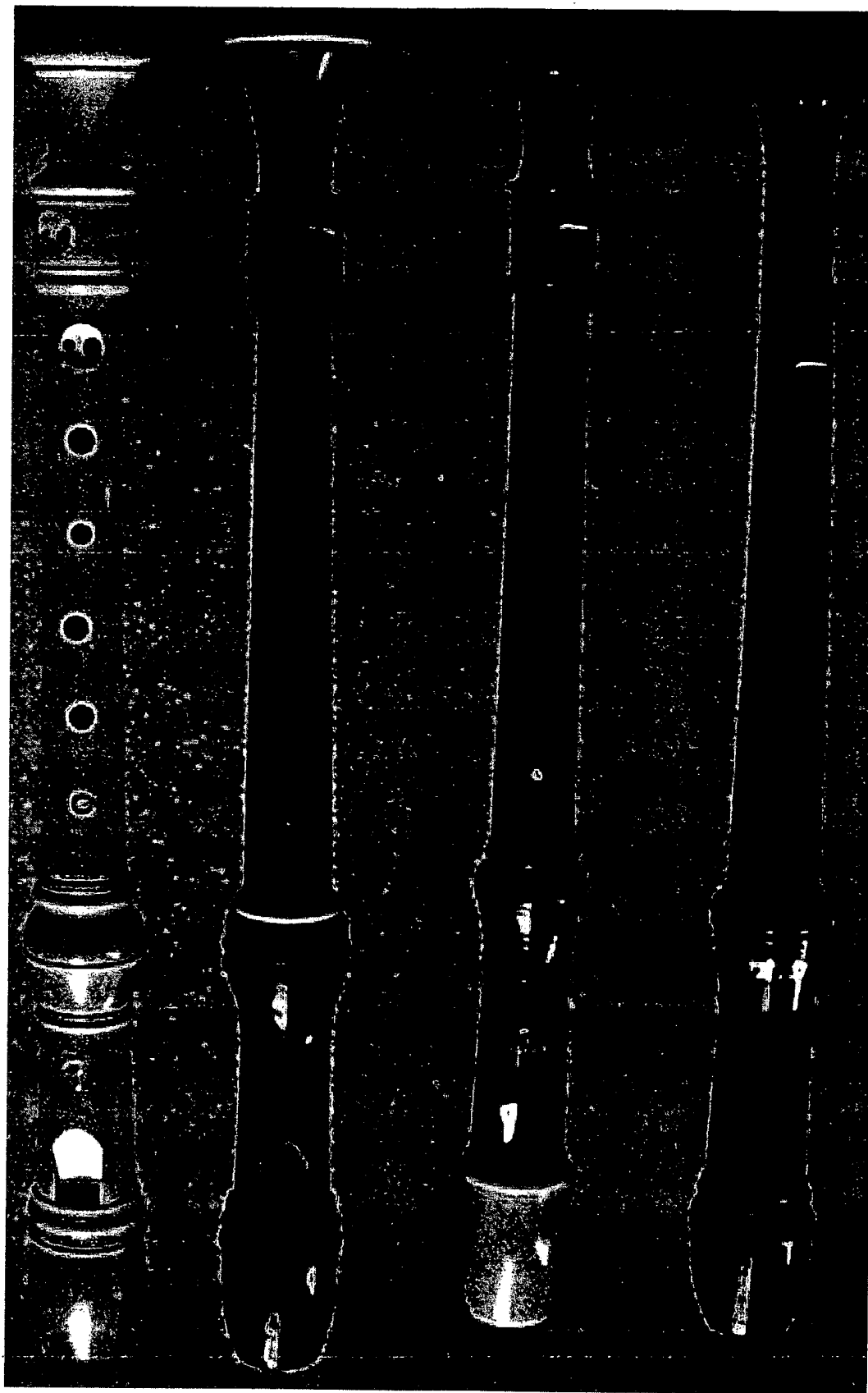
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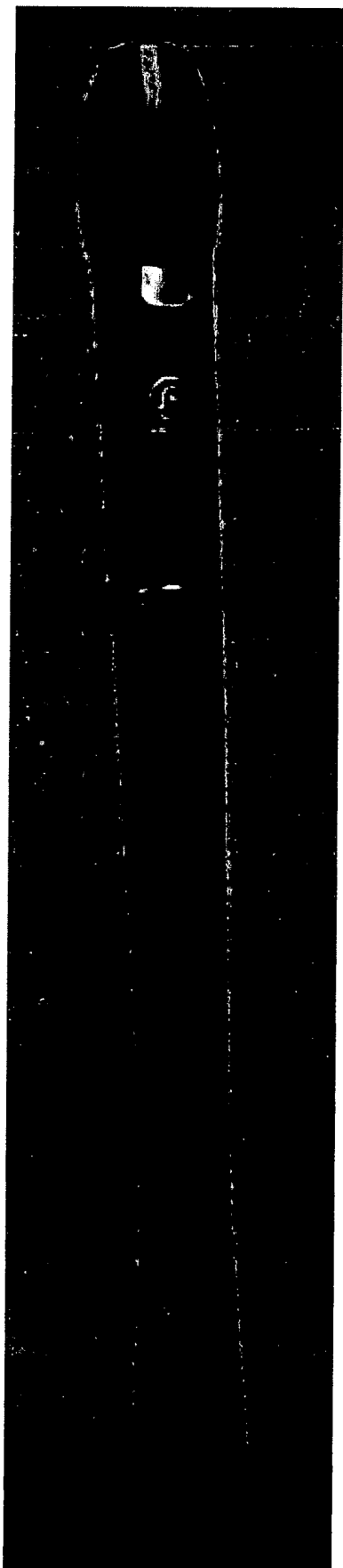
Addison, IL 60101
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**EXHIBIT A to
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Dr. Andrew M. Perry**

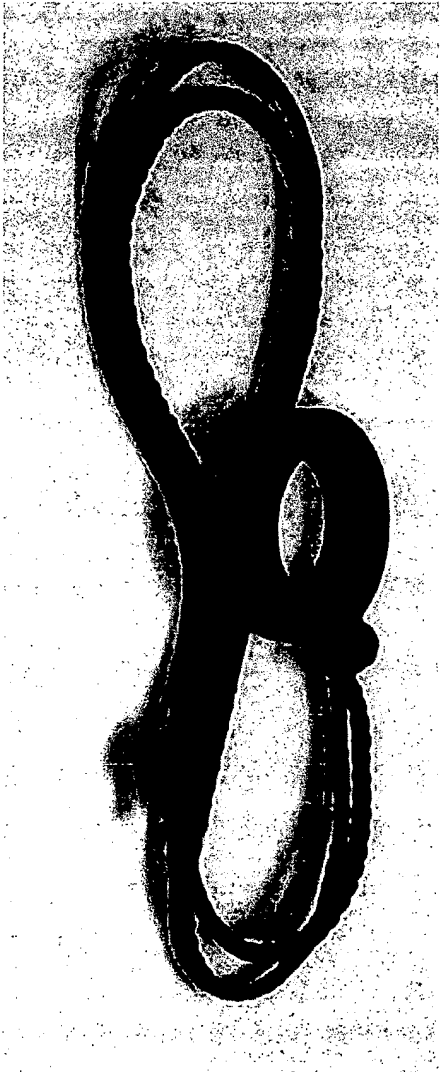


**U.S. Patent Application
Serial No. 08/689,721**

**EXHIBIT B to
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**EXHIBIT C to
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U.S. Patent Application
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